

## §216.241

### §216.241 Effective dates and definitions.

(a) Amended regulations are effective from February 1, 2012, through January 22, 2014.

(i) Two or more individuals of any cetacean species (not including mother/calf pairs), unless of species of concern listed in §216.241(b)(1)(ii) found dead or live on shore within a 2-day period and occurring within 30 miles of one another.

(ii) A single individual or mother/calf pair of any of the following marine mammals of concern: beaked whale of any species, dwarf or pygmy sperm whales, melon-headed whales, pilot whales, right whales, humpback whales, sperm whales, blue whales, fin whales, or sei whales.

(iii) A group of 2 or more cetaceans of any species exhibiting indicators of distress as defined in §216.241(b)(3).

(2) *Shutdown*—The cessation of MFAS/HFAS operation or detonation of explosives within 14 nm (Atlantic Ocean) or 17 nm (Gulf of Mexico) of any live, in the water, animal involved in a USE.

[74 FR 4876, Jan. 27, 2009, as amended at 76 FR 6701, Feb. 8, 2011; 77 FR 4922, Feb. 1, 2012]

### §216.242 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§216.106 and 216.247, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in §216.240(b), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in §216.240(c) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in §216.240(c) is limited to the following species, by the identified method of take and the indicated number of times:

(1) Level B Harassment ( $\pm 10$  percent of the number of takes indicated below):

(i) *Mysticetes*:

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(A) North Atlantic right whale (*Eubalaena glacialis*)—3330 (an average of 666 annually).

(B) Humpback whale (*Megaptera novaeangliae*)—21010 (an average of 4202 annually).

(C) Minke whale (*Balaenoptera acutorostrata*)—2075 (an average of 415 annually).

(D) Sei whale (*Balaenoptera borealis*)—5285 (an average of 1057 annually).

(E) Fin whale (*Balaenoptera physalus*)—4410 (an average of 882 annually).

(F) Bryde's whale (*Balaenoptera edeni*)—180 (an average of 36 annually).

(G) Blue whale (*Balaenoptera musculus*)—4005 (an average of 801 annually).

(ii) *Odontocetes*:

(A) Sperm whales (*Physeter macrocephalus*)—48790 (an average of 9758 annually).

(B) Pygmy or dwarf sperm whales (*Kogia breviceps* or *Kogia sima*)—21920 (an average of 4384 annually).

(C) Beaked Whales (Cuvier's, True's, Gervais', Sowerby's, Blainville's, Northern bottlenose whale) (*Ziphius cavirostris*, *Mesoplodon mirus*, *M. europaeus*, *M. bidens*, *M. densirostris*, *Hyperoodon ampullatus*)—24535 (an average of 4907 annually).

(D) Rough-toothed dolphin (*Steno bredanensis*)—13540 (an average of 2708 annually).

(E) Bottlenose dolphin (*Tursiops truncatus*)—3034010 (an average of 606802 annually).

(F) Pan-tropical dolphin (*Stenella attenuata*)—696530 (an average of 139306 annually).

(G) Atlantic spotted dolphin (*Stenella frontalis*)—1881805 (an average of 376361 annually).

(H) Spinner dolphin (*Stenella longirostris*)—105775 (an average of 21155 annually).

(I) Clymene dolphin (*Stenella clymene*)—232190 (an average of 46438 annually).

(J) Striped dolphin (*Stenella coeruleoalba*)—873620 (an average of 174274 annually).

(K) Common dolphin (*Delphinus spp.*)—482300 (an average of 96460 annually).

(L) Fraser's dolphin (*Lagenodelphis hosei*)—1730 (an average of 346 annually).

(M) Risso's dolphin (*Grampus griseus*)—470375 (an average of 94075 annually).

(N) Atlantic white-sided dolphin (*Lagenorhynchus acutus*)—103255 (an average of 20651 annually).

(O) White-beaked dolphin (*Lagenorhynchus albirostris*)—17250 (an average of 3450 annually).

(P) Melon-headed whale (*Peponocephala electra*)—8270 (an average of 1654 annually).

(Q) Pygmy killer whale (*Feresa attenuata*)—1400 (an average of 280 annually).

(R) False killer whale (*Pseudorca crassidens*)—2690 (an average of 538 annually).

(S) Killer whale (*Orcinus orca*)—2515 (an average of 503 annually).

(T) Pilot whales (Short-finned pilot or long-finned) (*Globicephala macrorhynchus* or *G. melas*)—636965 (an average of 127393 annually).

(U) Harbor porpoise (*Phocoena phocoena*)—767405 (an average of 153481 annually).

(iii) *Pinnipeds*:

(A) Gray seal (*Halichoerus grypus*)—39295 (an average of 7859 annually).

(B) Harbor seal (*Phoca vitulina*)—63295 (an average of 12659 annually).

(C) Hooded seal (*Cystophora cristata*)—78590 (an average of 15718 annually).

(D) Harp seal (*Pagophilus groenlandica*)—55010 (an average of 11002 annually).

(2) Level A Harassment and/or mortality of no more than 10 beaked whales (total), of any of the species listed in § 216.242(c)(1)(ii)(C) over the course of the 5-year regulations.

#### § 216.243 Prohibitions.

Notwithstanding takings contemplated in § 218.92 and authorized by a Letter of Authorization issued under §§ 216.106 and 216.247, no person in connection with the activities described in § 216.240 may:

(a) Take any marine mammal not specified in § 216.242(c);

(b) Take any marine mammal specified in § 216.242(c) other than by incidental take as specified in § 216.242(c)(1) and (2);

(c) Take a marine mammal specified in § 216.242(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under §§ 216.106 and 216.247.

#### § 216.244 Mitigation.

(a) When conducting training activities identified in § 216.240(c), the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 and 216.247 must be implemented. These mitigation measures include, but are not limited to:

(1) Mitigation Measures for ASW and MIW training:

(i) All lookouts onboard platforms involved in ASW training events shall review the NMFS-approved Marine Species Awareness Training (MSAT) material prior to use of mid-frequency active sonar.

(ii) All Commanding Officers, Executive Officers, and officers standing watch on the Bridge shall review the MSAT material prior to a training event employing the use of mid- or high-frequency active sonar.

(iii) Navy lookouts shall undertake extensive training in order to qualify as a watchstander in accordance with the Lookout Training Handbook (NAVEDTRA, 12968-D).

(iv) Lookout training shall include on-the-job instruction under the supervision of a qualified, experienced watchstander. Following successful completion of this supervised training period, Lookouts shall complete the Personal Qualification Standard program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects).

(v) Lookouts shall be trained in the most effective means to ensure quick and effective communication within the command structure in order to facilitate implementation of mitigation measures if marine mammals are spotted.

(vi) On the bridge of surface ships, there shall always be at least three people on watch whose duties include